

**NOT RECOMMENDED FOR FULL-TEXT PUBLICATION****File Name: 12a0402n.06****No. 10-1998****UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT****FILED*****Apr 13, 2012***

LEONARD GREEN, Clerk

IMHOFF INVESTMENT, LLC,

Plaintiff-Appellant,

v.

ALFOCCINO OF AUBURN HILLS, INC.,  
and ALFOCCINO, INC.,

Defendants-Appellees.

ON APPEAL FROM THE UNITED  
STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF MICHIGAN

Before: DAUGHTREY, COLE, and ROGERS, Circuit Judges.

PER CURIAM. The plaintiff, Imhoff Investment, LLC, appeals the district court's order dismissing its complaint for lack of subject-matter jurisdiction. Imhoff brought a claim pursuant to the Telephone Consumer Protection Act (TCPA), 47 U.S.C. § 227(b)(3), which provides for a private right of action in state court. The district court dismissed the complaint, holding that the TCPA did not confer federal-question jurisdiction. 28 U.S.C. § 1331. In doing so, the district court correctly noted that the majority of circuit courts addressing this issue have held that the TCPA does not authorize a private cause of action in federal court and that jurisdiction in section 227(b)(3) cases lies exclusively in state court. See *Murphey v. Lanier*, 204 F.3d 911, 915 (9th Cir. 2000) ("We join the Second, Third, Fourth, Fifth, and Eleventh Circuits in the somewhat unusual conclusion that state

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courts have exclusive jurisdiction over a cause of action created by a federal statute, the Telephone Consumer Protection Act of 1991.”) (internal quotation marks omitted), *abrogated on other grounds by Mims v. Arrow Fin. Servs., LLC*, 132 S. Ct. 740 (2012).

Nevertheless, while the instant appeal was pending, another panel of this court reached a conclusion contrary to the majority rule, interpreting the TCPA to confer *non-exclusive* jurisdiction over private actions filed in state court under section 227(b)(3). See *Charvat v. EchoStar Satellite, LLC*, 630 F.3d 459, 463 (6th Cir. 2010) (“[T]he district court had federal-question jurisdiction over the claims under the Telephone Act and pendent jurisdiction over the rest of the claims.”). We have long held that a “panel of this [c]ourt cannot overrule the decision of another panel.” *Salmi v. Sec’y of Health & Human Servs.*, 774 F.2d 685, 689 (6th Cir. 1985). Thus, *Charvat* “remains controlling authority [in the Sixth Circuit] unless an inconsistent decision of the United States Supreme Court requires modification of the decision or this [c]ourt sitting en banc overrules the prior decision.” *Id.* In the absence of either occurrence, we conclude that the district court has subject-matter jurisdiction in this case and, therefore, REVERSE the judgment of the district court and REMAND the matter for further proceedings.

**UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT**

Leonard Green  
Clerk

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Re: Case No. 10-1998, *Imhoff Investment LLC v. Alfoccino of Auburn Hills Inco, et al*  
Originating Case No. : 10-10221

Dear Counsel:

The Court issued the enclosed (Order/Opinion) today in this case.

Sincerely yours,

s/Patricia J. Elder  
Senior Case Manager  
Direct Dial No. 513-564-7034

cc: Mr. David J. Weaver

Enclosure

Mandate to issue